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(908) 298-4000

NOV 22 2004

## FACSIMILE TRANSMITTAL SHEET

TO:

Mail Stop: AMENDMENT  
Commissioner for Patents

FAX NUMBER:

9-1-703-872-9306

FROM:

Sandy Zaradic, Ph.D., Counsel, Patents

PHONE NUMBER:

(908) 298-7221

TOTAL NO. OF PAGES INCLUDING COVER

12

DATE

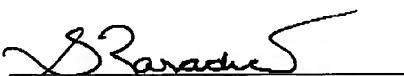
November 22, 2004

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Re: Application No: 10/786,886  
Filing Date: 02/25/2004  
First Named Inventor: Andrews *et al.*  
Examiner: Bernhardt, E. B.; Art Unit: 1624  
Attorney Docket No.: CD078701

Transmitted herewith are:

- Response Transmittal - 1 page
- Amendment and Response - 6 pages
- Terminal Disclaimer to Obviate a Double Patenting Rejection over a "Prior" Patent - 1 page
- Fee Transmittal form - 1 page **IN DUPLICATE**
- Certificate of Fax Transmission - 1 page
- Fax Cover Sheet - 1 page



SANDY S. ZARADIC, PH.D.  
COUNSEL, PATENTS  
REGISTRATION NO. 45,997

48419\_1.DOC

PHONE: (908) 298-7221

FAX: (908) 298-5388

Attorney Docket No.: CD0787Q1

Application No.: 10/786,886

Filing Date: 02/25/2004

First Named Inventor: Andrews et al.

PTO-9025 (08-00)  
Approved for use through 07/31/2006. OMB 0651-0032  
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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Document(s) being transmitted:

Transmittal form - 1 page

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Fee Transmittal form - 1 page IN DUPLICATE

Certificate of Fax Transmission - 1 page

Fax Cover Sheet - 1 page

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PTO/SB/21 (02-04)

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TRANSMITTAL  
FORM

(To be used for all correspondence after initial filing)

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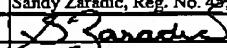
12

Application Number	10/786,886
Filing Date	02/25/2004
First Named Inventor	Andrews et al.
Art Unit	1624
Examiner Name	Bernhardt, Emily B.
Attorney Docket Number	CD0787Q1

## ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input checked="" type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s)	<input type="checkbox"/> After Allowance communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Remarks		
Cert. of Fax Transmission-1 page; Fax Cover page-1 page		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Sandy Zaradic, Reg. No. 45,997
Signature	
Date	November 22, 2004

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Signature	
	Date

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# FEE TRANSMITTAL

## for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 110.00)

## Complete if Known

Application Number	10/786,886
Filing Date	02/25/2004
First Named Inventor	Andrews et al.
Examiner Name	Bernhardt, Emily B.
Art Unit	1624
Attorney Docket No.	CD0787Q1

## METHOD OF PAYMENT (check all that apply)

 Check  Credit card  Money Order  Other  None
 Deposit Account:

Deposit Account Number	19-0365
Deposit Account Name	Schering-Plough Corporation

The Director is authorized to: (check all that apply)

 Charge fees indicated below  Credit any overpayments  
 Charge any additional fees or any underpayment of fees  
 Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.
 

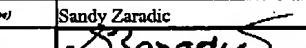
## FEE CALCULATION (continued)

## 3. ADDITIONAL FEES

Large Entity Small Entity

FEE Code (\$)	FEE Code (\$)	Fee Description	Fee Paid
1051 130	2051 68	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 430	2252 215	Extension for reply within second month	
1253 980	2253 480	Extension for reply within third month	
1254 1,630	2254 785	Extension for reply within fourth month	
1255 2,080	2255 1,040	Extension for reply within fifth month	
1401 340	2401 170	Notice of Appeal	
1402 340	2402 170	Filing a brief in support of an appeal	
1403 300	2403 150	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1482 110	2452 55	Petition to revive - unavoidable	
1453 1,330	2453 665	Petition to revive - unintentional	
1501 1,370	2501 1685	Utility issue fee (or reissue)	
1502 480	2502 245	Design issue fee	
1503 680	2503 330	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1808 180	1808 180	Submission of Information Disclosure Stmt	
6021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 790	2810 395	For each additional invention to be examined (37 CFR 1.128(b))	
1801 780	2801 395	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	
Other fee (specify)	Terminal Disclaimer over Prior Patent		110.00
- Reduced by Basic Filing Fee Paid		SUBTOTAL (\$)	(\$ 110.00)

(Complete if applicable)

Name (Print/Type)	Sandy Zaradic	Registration No. (Attorney/Agent)	45,997	Telephone	908-298-7221
Signature				Date	November 22, 2004

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## DUPLICATE

PTO/SB/17 (10-04)

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FEE TRANSMITTAL  
for FY 2005

Effective 10/11/2004. Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 110.00)

## Complete if Known

Application Number	10/786,886
Filing Date	02/25/2004
First Named Inventor	Andrews et al.
Examiner Name	Bernhardt, Emily B.
Art Unit	1624
Attorney Docket No.	CD0787Q1

## METHOD OF PAYMENT (check all that apply)

 Check  Credit card  Money Order  Other  None

 Deposit Account:

Deposit Account Number	19-0365
Deposit Account Name	Schering-Plough Corporation

The Director is authorized to (check all that apply)

Change fees indicated below  Credit any overpayments

Change any additional fees or any underpayment of fees

Change fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

## 1. BASIC FILING FEE

Large Entity Small Entity

Fee	Fee	Fee Description	Fee Paid
Code (\$)	Code (\$)		
1001 780	2001 395	Utility filing fee	
1002 350	2002 175	Design filing fee	
1003 550	2003 275	Plant filing fee	
1004 700	2004 395	Reissue filing fee	
1005 150	2005 80	Provisional filing fee	
<b>SUBTOTAL()</b>		(\$)	

## 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

		Fee from Extra Claims below		Fee Paid
Total Claims	-20*	=	X	
Independent Claims	- 3 =	X		
Multiple Dependent				

Large Entity Small Entity

Fee	Fee	Fee Description
Code (\$)	Code (\$)	
1202 18	2202 9	Claims in excess of 20
1201 88	2201 44	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 88	2204 44	Reissue independent claims over original patent
1205 16	2205 9 **	Reissue claims in excess of 20 and over original patent
<b>SUBTOTAL (s)</b>		\$

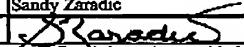
\* or number previously paid, if greater. For Reissues, see above

## FEE CALCULATION (continued)

3. ADDITIONAL FEES  
Large Entity Small Entity

FEE	FEE	Fee Description	Fee Paid
Code (\$)	Code (\$)		
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 60	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	2053 130	Non-English specification	
1812 2,620	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
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1451 1,510	1451 1,510	Petition to institute a public use proceeding	
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1453 1,350	2453 665	Petition to revive - unintentional	
1501 1,370	2501 685	Utility issue fee (or reissue)	
1502 490	2502 248	Design issue fee	
1503 660	2503 330	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 60	1807 50	Processing fee under 37 CFR 1.17(q)	
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1801 790	2801 395	Request for Continued Examination (RCE)	
1802 800	1802 900	900 Request for expedited examination or design application	
Other fee (specify)		Terminal Disclaimer over Prior Patent	110.00
Reduced by Basic Filing Fee Paid		SUBTOTAL (s)	(\$ 110.00)

(Complete if applicable)

Name (Print/Type)	Sandy Zaradic	Registration No. (Amend, Amend)	45,997	Telephone	908-298-7221
Signature		Date	November 22, 2004		

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PTO/SB/26 (09-04)

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TERMINAL DISCLAIMER TO OBLIGATE A DOUBLE PATENTING  
REJECTION OVER A "PRIOR" PATENTDocket Number (Optional)  
CD0787Q1

In re Application of: Andrews et al.

Application No.: 10/786,886

Filed: 02/25/2004

For: Crystalline antifungal polymorph

The owner, Schering Corporation, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term prior patent No. 6,713,481 as the term of said prior patent is defined in 35 U.S.C. 154 and 173, and as the term of said prior patent is presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patent, "as the term of said prior patent is presently shortened by any terminal disclaimer," in the event that said prior patent later

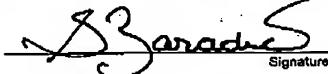
expires for failure to pay a maintenance fee;  
is held unenforceable;  
is found invalid by a court of competent jurisdiction;  
is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;  
has all claims canceled by a reexamination certificate;  
is released; or  
is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1.  For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2.  The undersigned is an attorney or agent of record. Reg. No. 45,997



Signature

11/22/04

Date

Sandy Zaradic

Typed or printed name

908-298-7221

Telephone Number

Terminal disclaimer fee under 37 CFR 1.20(d) included.

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- Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTC/S13/96 may be used for making this certification. See MPEP § 324.

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